

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2 ADVOCATES FOR RESPONSIBLE
3 DEVELOPMENT,

4 Petitioner,

5
6 v.

7 MASON COUNTY,

8
9 Respondent,

10 and

11 SHAW FAMILY L.L.C.,

12
13 Intervenor
14

Case No. 07-2-0006

**ORDER DENYING INTERVENOR'S
MOTION FOR RECONSIDERATION**

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17 THIS Matter comes before the Board upon the motion of Shaw Family L.L.C. for
18 reconsideration of the Board's August 20, 2007 Final Decision and Order in this case.¹
19 Petitioner Advocates for Responsible Development (ARD) filed an answer to the
20 Intervenor's motion on August 29, 2007.²
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23 **DISCUSSION**

24 **Positions of the Parties**

25 Intervenor asks the Board to reconsider its decision as to Issue No. 15 on the grounds that
26 the issue is now moot.³ Because the property of Intervenor has been administratively
27 segregated, the Intervenor argues that it no longer meets the criteria for property of Long
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31 ¹ Intervenor's Motion for Reconsideration Re: Mootness as to Issue No. 15, August 27, 2007.

32 ² Petitioners' Motion for Reconsideration and Answer to Intervenor at 6-7.

³ Intervenor's Motion for Reconsideration Re: Mootness as to Issue No. 15 at 1.

1 Term Commercial Forest.⁴ Intervenor refers to MCC 17.01.060(A)(2) as requiring a
2 minimum parcel size of 80 acres for designation of a parcel as Long Term Commercial
3 Forest (LCTF).⁵
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5 Petitioner ⁶responds that Intervenor's argument fails on three grounds: (1) Petitioner
6 alleges that certain comprehensive plan policies and the criteria in §17.01.060 allow parcels
7 smaller than 80 acres to be designated as LCTF.⁷ (2) The parcel was more than 80 acres
8 in size when it was originally designated as LCTF, Petitioner asserts, and "the opportunity
9 for timely challenge to this classification is long past."⁸ (3) The conditions for
10 reclassification of the Intervenor's property from LCTF to In Holding, Petitioner claims, do
11 not include minimum parcel size
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14 Intervenor also claims that the Board cannot base its decision on the failure of the County to
15 follow its comprehensive plan policies. "[t]he Comprehensive Plan is a series of policies
16 which are inappropriately considered as a direct basis for any decision. It is the ordinances
17 themselves that must be applied."⁹
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19 **Board Discussion**

20 Motions for reconsideration before the growth management hearings boards are governed
21 by the Board's Rules of Practice and Procedure, Ch. 242-02 WAC. These rules allow
22 motions for reconsideration of a final decision:
23

24 After issuance of a final decision any party may file a motion for reconsideration with
25 a board in accordance with subsection (2) of this section. Such motion must be filed
26 within ten days of service of the final decision...

27 WAC 242-02-832(1)(in pertinent part).

28 ⁴ *Ibid* at 2.

29 ⁵ *Ibid*.

30 ⁶ Mr. Diehl is no longer a petitioner in this action, the Board having found he lacks standing. Therefore, only
ARD is a petitioner in this case.

31 ⁷ Petitioners' [sic] Motion for Reconsideration and Answer to Intervenor at 6-7.

32 ⁸ *Ibid*.

⁹ Response to Petitioner's Motion for Reconsideration and Answer to Intervenor's Motion for Reconsideration,
September 6, 2007.

1 The bases for reconsideration in the Board Rules of Practice and Procedure are:

- 2 (a) Errors of procedure or misinterpretation of fact or law, material to the party
3 seeking reconsideration;
4 (b) Irregularity in the hearing before the board by which such party was prevented
5 from having a fair hearing; or
6 (c) Clerical mistakes in the final decision and order.¹⁰

7 Although Intervenor did not expressly address the bases for reconsideration in the Boards'
8 Rules, it is apparent that Intervenor is asserting an error "of procedure or misinterpretation
9 of fact or law, material to the party seeking reconsideration."¹¹ The Intervenor argues that
10 the County's failure to address Comprehensive Plan Policies RE-205(c) and RE-206, as
11 found by the Board, is immaterial because the property no longer meets the criteria of Long
12 Term Commercial Forest.¹² Intervenor also argues that the Board cannot base its finding of
13 non-compliance on the comprehensive plan policies but must base it on the development
14 regulations that implement them.¹³

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16 The Board decided on appeal of the designation and mapping change of Intervenor's
17 property that the County's actions failed to comply with the consistency requirements of
18 RCW 36.70A.070; the change in designation and mapping did not comply with
19 Comprehensive Plan Policies RE-205(c) and RE-206 for changing LTCF lands to In
20 Holding Lands. Therefore, the question before the Board was whether the County's action
21 in adopting these changes complied with GMA requirements at the time.
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24 The "mootness" argument that Intervenor advances turns on the administrative segregation
25 of Intervenor's property after the adoption of the challenged ordinance. Since this occurred
26 after the County adopted the designation and mapping change, it does not affect the
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28 ¹⁰ WAC 242-02-832(2)

29 ¹¹ WAC 242-02-832(2)(a).

30 ¹² Intervenor's Motion for Reconsideration Re: Mootness as to Issue No. 15 at 2.

31 ¹³ Response to Petitioner's Motion for Reconsideration and Answer to Intervenor's Motion for Reconsideration,
32 September 6, 2007. This "answer" is not allowed under the Board rules but the Board will address the
argument as the Board's decision on this point appears not to have been clear.

1 Board's determination that the ordinance failed to comply with RCW 36.70A.070 when it
2 was adopted.

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4 Further, we agree with Petitioner that the County is not now in the position of making an
5 initial designation decision. The designation of Intervenor's property as LCTF land was
6 made according to the County's designation criteria and was not appealed in a timely
7 fashion. Therefore, it was a compliant designation. The change in designation and
8 mapping did not comply with Comprehensive Plan Policies so it is the *change* that is non-
9 compliant.
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12 The Board would note that the administrative segregation of Intervenor's property into two
13 roughly 40 acre parcels is not the last of the property divisions that may be accomplished
14 with a designation and mapping change to In Holding Lands from LCTF. Further
15 subdivision of the parcels is allowed under the In Holding designation. The Board's finding
16 that the designation and mapping change was non-compliant with RCW 36.70A.070 is
17 significant to those future land use decisions and not, therefore, moot in that sense.
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19 As to Intervenor's argument that the Board must determine compliance under the
20 development regulations rather than the comprehensive plan, under the terms of
21 implementing development regulations, the comprehensive plan policies are also
22 applicable. The Rezone Criteria of the Mason County Development Regulations require
23 consistency with the Comprehensive Plan.¹⁴ As the staff report stated, RE-205 and RE-206
24 are two of the Mason County Comprehensive Plan policies that would apply to the
25 designation change.¹⁵ Whether looking to consistency with the comprehensive plan directly,
26 or to the development regulation that requires consistency with the comprehensive plan,
27 these plan policies must be followed to make a designation change from LCTF to In
28 Holding.
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32 ¹⁴ §1.05.080.

¹⁵ Exhibit 184 at 5.

1 **Conclusion:** The administrative segregation of Intervenor's property after the adoption of
2 Ordinance No. 139-06 did not moot the appeal in this case. The change in designation and
3 mapping of the Intervenor property was non-compliant and subsequent actions did not
4 disturb the County's original decision to designate the property as LTCF.
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6 **ORDER**

7 Based on the foregoing, the Intervenor's motion for reconsideration is hereby DENIED.
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9 So Ordered this 10th day of September 2007.
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12 _____
13 Margery Hite, Board Member
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15 _____
16 Holly Gadbow, Board Member
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18 _____
19 James McNamara, Board Member
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22 Pursuant to RCW 36.70A.300 this is a final order of the Board.

23 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the
24 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
25 judicial review may be instituted by filing a petition in superior court according to the
26 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil

27 **Enforcement.** The petition for judicial review of this Order shall be filed with the
28 appropriate court and served on the Board, the Office of the Attorney General, and all
29 parties within thirty days after service of the final order, as provided in RCW
30 34.05.542. Service on the Board may be accomplished in person, by fax or by mail,
31 but service on the Board means actual receipt of the document at the Board office
32 within thirty days after service of the final order.

1 **Service.** This Order was served on you the day it was deposited in the United States
2 mail. RCW 34.05.010(19)

3 **Reconsideration.** Pursuant to WAC 242-02-832(3), an order on reconsideration is not
4 subject to a motion for reconsideration.
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